

<sup>1</sup> See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

## **FACTUAL HISTORY**

On November 14, 2002 appellant, a 42-year-old letter carrier, sustained injuries to her right foot and knee, left elbow and lumbar spine. The Office accepted her traumatic injury claim for right foot, right knee, left elbow and lumbosacral sprains. Appellant returned to full-time light duty on November 22, 2002.

The Office accepted January 8, 2003 and May 24, August 27, September 20 and November 12, 2004 claims for recurrences of disability. On August 25, 2005 appellant's treating physician, Dr. Daniel W. Wilen, a Board-certified orthopedic surgeon, released her to work full time with restrictions which included lifting and carrying no more than 20 pounds for three hours per day; standing for no more than three hours per day; walking and climbing for no more than two hours per day; and resting when needed.

On May 15, 2007 appellant submitted a recurrence of disability claim alleging that she was totally disabled as of May 11, 2007 due to her November 14, 2002 employment injury. She stated that she had experienced pain in her back, leg, knee and foot, as well as "lots of muscle spasms," since her return to work.

Appellant submitted reports from Dr. Wilen for the period May 14 through June 28, 2007. In a May 14, 2007 report of a radiology study, Dr. Wilen diagnosed degenerative joint disease of the right foot and knee, left elbow and lumbar spine. On June 4, 2007 he indicated that appellant had been totally incapacitated since May 14, 2007 due to pain in her lower back, left leg, knee and foot.

On June 22, 2007 the employing establishment controverted appellant's claim on the grounds that her claimed disabling conditions were not work related. It also contended that there was insufficient medical evidence to support her claim.

In an August 23, 2005 letter, the Office advised appellant that the evidence submitted was insufficient to establish her recurrence claim. It informed her, because she had returned to light duty following her most recent period of disability, she was required to provide evidence showing that there had been a change in the nature and extent of her injury-related condition such that she was unable to perform the light-duty job, or that there had been a change in the nature and extent of her light-duty job requirements.

Appellant submitted an August 30, 2007 report from Dr. Jaime H. Nieto, a Board-certified neurosurgeon, who listed her complaints of severe pain in her right knee and hip. Dr. Nieto's examination of the left lower extremity was normal. He found decreased range of motion in the neck. In the thoracic spine, Dr. Nieto found significant degenerative disc disease, osteophytes and bony bridges.

By decision dated October 24, 2007, the Office denied appellant's recurrence claim on the grounds that the medical evidence failed to show a change in the nature and extent of her injury-related condition or in her light-duty job requirements.

On October 14, 2008 appellant, through her representative, requested reconsideration. He contended that the medical evidence of record demonstrated that appellant had sustained a

recurrence of disability on May 11, 2007. The representative stated that there was a clear change in the nature and extent of appellant's injuries causally related to the November 14, 2002 injury.

In support of her request for reconsideration, appellant submitted an August 23, 2008 emergency room report, which contained a diagnosis of cervicalgia, an August 23, 2008 report of a magnetic resonance imaging (MRI) scan of the neck, copies of medical reports received prior to the issuance of the October 24, 2007 decision and duty status reports for the period November 13, 2007 through August 28, 2008 from Dr. Wilen. On November 13 and December 11, 2007 and January 25, 2008 Dr. Wilen indicated by placing a checkmark in the "no" box that appellant was not advised to return to work. On August 28, 2008 he indicated by placing a checkmark in the "yes" box that appellant was permitted to return to part-time employment.

By decision dated November 10, 2008, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant merit review. It found the medical evidence submitted was irrelevant or duplicative of evidence previously submitted and considered.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>2</sup> the Office regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>4</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>5</sup> The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>6</sup>

### **ANALYSIS**

Appellant's October 14, 2008 request for reconsideration neither alleged, nor demonstrated, that the Office erroneously applied or interpreted a specific point of law.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608(b).

<sup>6</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

Additionally, her representative did not advance a relevant legal argument not previously considered by the Office. He disagreed with the Office's decision, contending that the evidence was sufficient to establish appellant's recurrence claim. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

The Board also finds that the evidence submitted in support of the request for reconsideration does not constitute relevant and pertinent new evidence not previously considered by the Office. In its October 24, 2007 decision, the Office denied appellant's recurrence claim on the grounds that the medical evidence failed to show a change in the nature and extent of her injury-related condition, or in her light-duty job requirements. Appellant submitted an emergency room report, which contained a diagnosis of cervicgia, and a report of an MRI scan of the neck. The Office did not accept appellant's case for a cervical condition. There is no evidence of record which supports any causal relationship between a cervical condition and the accepted injury. Therefore, these reports are not relevant to the issue in this case. Copies of medical reports received and reviewed by the Office prior to the issuance of the October 24, 2007 decision are cumulative and duplicative in nature and thus have no evidentiary value.<sup>7</sup> Dr. Wilen's duty status reports do not address whether appellant experienced a recurrence of disability due to a change in the nature and extent of her injury-related condition, or in her light-duty job requirements, and do not contain an explanation as to how her alleged disability was causally related to her accepted injury. Therefore, they are irrelevant and do not constitute a basis for reopening her claim for merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her October 14, 2008 request for reconsideration.

On appeal, appellant's representative contends that the request for reconsideration established that appellant sustained a recurrence of disability on May 11, 2007 causally related to her accepted injury and, thus, warranted further merit review. As noted the Board does not have jurisdiction over the merits of this case.<sup>8</sup> The issue addressed by the Office in its November 10, 2008 decision was whether the evidence submitted on reconsideration was sufficient to warrant merit review. For reasons stated herein, the Board finds that the Office properly denied appellant's request for merit review.

### **CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

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<sup>7</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *Denis M. Dupor*, 51 ECAB 482 (2000).

<sup>8</sup> See *supra* note 1 and accompanying text.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 10, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board